

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #2	CCRB Case #: 202004548	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 8:30 PM	Location of Incident: Third Avenue and East 7th Street	Precinct: 09	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 06/06/2020 3:30 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Wed, 06/24/2020 11:18 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. Officers			

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against an individual.	
B. An officer	Force: An officer struck § 87(2)(b) with a baton.	

## Case Summary

On June 24, 2020, the CCRB received the following case from IAB via original log number 20-15262, which was reported by Sergeant Lesly Charles of IAB on the behalf of § 87(2)(b) on June 6, 2020 (Board Review 01).

On May 30, 2020, at approximately 8:30 PM, § 87(2)(b) was at Third Avenue and East 7<sup>th</sup> Street in Manhattan, marching with other protestors in a demonstration against police brutality. While doing so, § 87(2)(b) happened to notice a police encounter down the block on East 7<sup>th</sup> Street. Seeing that two unidentified officers were struggling with an unidentified male on the ground, § 87(2)(b) ran over to them and asked the officers – who were both kneeling on the male’s back – to get off of him (**Allegation A: Force** § 87(2)(g)). Just as he said that, a third unidentified officer approached from the side and swung his baton at § 87(2)(b) (**Allegation B: Force** § 87(2)(g)). § 87(2)(b) responded by raising his left arm to shield himself from the baton, which struck his left forearm once. As soon as he was hit, § 87(2)(b) turned around and ran from the location, without any further verbal or physical interactions with the three officers. § 87(2)(b) was not pursued, summonsed, or arrested that night. After seeking medical treatment the following day, § 87(2)(b) was diagnosed with a fractured left forearm (Board Review 25).

The NYPD found no body-worn camera (BWC) footage related to this incident (Board Review 07). Due to news media coverage of § 87(2)(b)’s allegations, this case was added to the CCRB’s sensitive case list (Board Review 02-03).

## Findings and Recommendations

**Allegation (A) Force – Physical Force: Officers used physical force against an individual.**  
**Allegation (B) Force – Nightstick as club: An officer struck § 87(2)(b) with a baton.**

## Known Facts and General Descriptions

§ 87(2)(b) was interviewed by telephone on June 29, 2020 (Board Review 04).

On the evening of May 30, 2020, at approximately 8:30 PM, § 87(2)(b) was demonstrating against police brutality by marching with approximately one hundred other protestors from Brooklyn to Union Square in Manhattan. At approximately 8:30 PM, as the group was passing through Cooper Square, a small park located off Third Avenue and East 7<sup>th</sup> Street, § 87(2)(b) heard commotion coming from further down the block on East 7<sup>th</sup> Street (see location map, Board Review 05). Seeing two officers there struggling with an individual on the ground, § 87(2)(b) immediately ran over to the scene of the struggle. The two officers were kneeling on the male individual’s back and grappling with his hands. While the male was moving about on the ground, § 87(2)(b) did not know whether the officers were attempting to handcuff the male or if they had already done so.

§ 87(2)(b) told the two officers to get off the individual. They did not react to this presence. Before he could say anything else, § 87(2)(b) was approached from the side by a third officer, who had a baton in his hand. Without saying anything, the third officer raised the baton and swung it at § 87(2)(b)’s upper body in a horizontal direction. To shield himself, § 87(2)(b) raised his left forearm, where he was struck once by the officer’s baton. As soon as he was hit, without any further exchange with officers, § 87(2)(b) turned around and ran up the street to Cooper Square and rejoined the march. § 87(2)(b) did not believe he was pursued and was not summonsed or arrested at any point that night. § 87(2)(b) sought medical treatment the following day and was diagnosed with a “billy-club break” to his left forearm.

§ 87(2)(b) could only describe the two officers struggling with the individual on the ground as blue-uniformed white males and recalled no other specifics about their appearance. Regarding the male, § 87(2)(b) could only state that he appeared to be young. He did not know if the male was ultimately arrested or not and, besides the officers kneeling on his back, saw no other force used against him. § 87(2)(b) described the officer who struck him with the baton as an approximately 6'2" tall blue-uniformed black or dark-skinned Hispanic male with a muscular build.

### **Body-Worn Camera Footage**

The investigation requested body-worn camera (BWC) footage of the incident from the NYPD's Legal Department, specifying the date, time, location, and nature of the incident. The NYPD found no relevant BWC after searching within these parameters and returned negative results (Board Review 07). BWC footage was produced in a separate CCRB complaint, case number 202004099 § 87(2)(g) which involved an unrelated incident that occurred in the vicinity of Third Avenue and East 7<sup>th</sup> Street approximately an hour after § 87(2)(b)'s encounter (discussed further in the next section). However, the BWC footage was not relevant to either that case or the incident in question in this case.

No NYPD TARU cameras covered the general vicinity of the incident location. In case number 202004099, video footage was obtained from four exterior surveillance cameras at the Cooper Union School located at 41 Cooper Square (Board Review 08-11). However, none of the four cameras covered East 7<sup>th</sup> Street, and the footage – despite capturing the march as it proceeded up Third Avenue – did not show anyone resembling § 87(2)(b) or any activity indicating the incident he described. Additional video footage retrieved by Internal Affairs Bureau's Group 54 (discussed further on page 4) did not show the incident either.

### **NYPD Documents Reviewed**

The NYPD's Booking and Arraignments System (BADS) was queried for all arrests in the 9<sup>th</sup> Precinct on May 30, 2020 (Board Review 12). There were no arrests noted as having occurred at the specific incident location identified by § 87(2)(b) but there were two arrests noted as having occurred near the incident location, the first at East 6<sup>th</sup> Street and Cooper Square at 9:25 PM and the second at Third Avenue and East 9<sup>th</sup> Street at 9:35 PM (Board Review 13-14). A review of the NYPD documents generated for these two incidents, however, indicated that neither incident appeared to be related to what happened to § 87(2)(b) an hour before.

As noted, § 87(2)(b) stated that his encounter, at approximately 8:30 PM, was brief in duration and ended with him running away from the scene on East 7<sup>th</sup> Street, then re-joining the still-moving march – without being pursued or meeting any police presence – and proceeding uneventfully to Union Square Park at 14<sup>th</sup> Street (Board Review 04). However, the EVENT documentation for the East 6<sup>th</sup> Street and Cooper Square incident show that, at 9:26 PM, all available units were called to the location to counter “500 or more” protestors who were “throwing things” at officers (Board Review 13), and that at least two individuals, § 87(2)(b) were arrested at approximately 9:30 PM for (respectively) obstructing enforcement actions and damaging a police vehicle (Board Review 14-15). Given that these individuals' arrest and TRI report narratives – alleging that a mass of protestors were throwing projectiles and shattering police vehicle windows – were not consistent with the scene described by § 87(2)(b) the investigation found no discernible connection between the possible detention or arrest he witnessed at 8:30 PM and the later police activity at 9:30 PM.

The protest-related detail rosters for May 30, 2020, showed 18 “mobile” teams utilizing vans and scooters were assigned to cover protest activity around Union Square, with each team drawn from regular and specialized commands across the five boroughs (Board Review 16-17). However, none of these rosters listed any location-specific posts or zones of coverage, including the area around East 7<sup>th</sup> Street and Third Avenue. Consequently, while four officers from the same detail were identified as being involved in the 9:30 PM arrests at Cooper Square (Board Review), there was no documentation to show them – or any other officers – as being present in the same vicinity an hour earlier.

Additionally, while the (earlier referenced) second arrest at Third Avenue and East 9<sup>th</sup> Street showed that officers assigned to Strategic Resource Group (SRG) 3 were also operating in the area, neither the SRG 3 roll call nor the 9<sup>th</sup> Precinct roll call listed any location-specific or protest-related posts or assignments (Board Review 18-19). The Event Summary and Resource Recap Log for the 9<sup>th</sup> Precinct showed no jobs in the vicinity between 8:00 PM and 9:00 PM either (Board Review 20-21). And no UF-250 reports were prepared in the 9<sup>th</sup> Precinct that day (Board Review 22).

In summary, the NYPD documents did not reference the baton-strike against § 87(2)(b) the third-party physical encounter he witnessed, or any police activity at the time and place of occurrence alleged. Furthermore, as described by § 87(2)(b) the group of protestors that he was a part of had been walking from Brooklyn and on their way to Union Square at the time of this incident, further complicating the process of identifying any specific NYPD documents that would identify the officers who may have been in the vicinity of this moving group of protesters at the time of the incident.

### **Concurrent Investigations**

A concurrent investigation into § 87(2)(b)'s allegations was conducted by Sergeant Yuriy Chuyko of the Internal Affairs Bureau's (IAB) Group 54, § 87(2)(g). The case file shows that Sgt. Chuyko obtained an interview statement from § 87(2)(b) which was consistent with his CCRB statement. Sgt. Chuyko also interviewed § 87(2)(b) who stated that she did not recall being present for an encounter resembling the encounter alleged by § 87(2)(b). In addition to reviewing the NYPD documents made available to the CCRB, Sgt. Chuyko also reviewed BWC footage from Strategic Resource Group commands he believed may have been operating in the area at the time. However, Sgt. Chuyko ultimately found no video or documentary evidence of the incident described by § 87(2)(b) and could not identify any possible subject officers. The Group 54 case on this incident was thus closed as “Unsubstantiated.”

### **Ranking Officers**

As noted above, the many details mobilized at or about the incident location were supervised by sergeants or lieutenants from commands across the five boroughs. The documents did not identify any officers of a rank higher than the rank of Lieutenant as having been assigned to a detail in the vicinity of the incident location (Board Review 16).

### **Officers Interviewed**

The investigation was unable to identify any possible subject officers or any members of service who would have aided subject officer identification. As such, no officers were interviewed.

### Allegation Recitation and Disposition

**Allegation (A) Force – Physical Force: Officer used physical force against an individual.**

**Allegation (B) Force – Nightstick as club: An officer struck § 87(2)(b) with a baton.**

§ 87(2)(g) the investigation was unable to find any record of police activity at the incident location at the incident time provided by § 87(2)(b) § 87(2) the investigation identified upwards of 200 officers operating in the general area of the location § 87(2)(g)

### Civilian CCRB History

§ 87(2)(b)

### Mediation, Civil and Criminal Histories

- This case was not mediation suitable.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming injuries to his left arm and body due to assault, and the violation of his civil and constitutional rights. § 87(2)(b) is seeking ten million dollars as redress (Board Review 06).
- § 87(2)(b)

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Squad No.: 02

Investigator: /sprakash      Inv. Santosh Prakash      12/28/20  
Signature      Print Title & Name      Date

Squad Leader: Alexander Opoku-Agyemang      IM Alexander Opoku-Agyemang      12/30/2020  
Signature      Print Title & Name      Date